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Conference of the States Parties to the United Nations Convention against Corruption

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Implementation Review Group
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Item 6 of the provisional agenda**
Other matters

Document submitted by the UNCAC Coalition, a non-governmental organization not in consultative status with the Economic and Social Council***

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Civil Society Statement on Asset Recovery

6 June 2018

We are a group of civil society organisations including UNCAC Coalition members, Transparency International chapters and other groups and have prepared this statement as an input to discussions on Member States' discussions on Asset Recovery, taking place on 6 -7 June 2018, which will address the issue of timely information-sharing in line with UNCAC Article 56. This statement will focus on other issues that are within the scope of these discussions, in particular the lessons learned to date from the first ever Global Forum on Asset Recovery (GFAR) in December 2017 co-hosted by the US and UK and focusing on Sri Lanka, Tunisia, Nigeria and Ukraine.

Civil society organisations made several inputs to the GFAR in November 2017, including an opening and closing statement, annexed to this document and a set of reports on GFAR countries, assessing their roles in prevention of the laundering of corruption proceeds and their asset recovery systems and processes.

Three of the main messages that we sought to convey were:

- Asset recovery must be accountable and transparent at all stages
- The role that civil society has to play in asset recovery should be properly and formally recognized
- Assets recovered should be used for repairing the harm caused by grand corruption and for meeting Goal 16 of the Sustainable Development Goals (SDGs)

We believe the GFAR showed the potential benefits of establishing a regular framework for dealing with asset recovery. Such framework should be multilateral, multi-stakeholder, transparent and accountable.

We welcome the GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases adopted by the GFAR co-hosts and four focus countries. In particular, we welcome Principles 4, 5, 6 and 10 as follows:

- Principle 4: Transparency and accountability which states that "Transferring and receiving countries will guarantee transparency and accountability in the return and disposition of recovered assets. Information on the transfer and administration of returned assets should be made public and be available to the people in both the transferring and receiving country...."
- Principle 5: Beneficiaries which states that "Where possible, and without prejudice to identified victims, stolen assets recovered from corrupt officials should benefit the people of the nations harmed by the underlying corrupt conduct."
- Principle 6: Strengthening anti-corruption and development, which states that "Where possible, in the end use of confiscated proceeds, consideration should also be given to encouraging actions which fulfil UNCAC principles of combating corruption, repairing the damage done by corruption, and achieving development goals."
- Principle 10: Inclusion of non-government stakeholders, which states that "To the extent appropriate and permitted by law, individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, should be encouraged to participate in the asset return process, including by helping to identify how harm can be remedied, contributing to decisions on return and disposition, and fostering transparency and accountability in the transfer, disposition and administration of recovered assets."

We encourage Member States to adopt these principles. We further urge those countries that were involved in GFAR to work with StAR and UNODC to develop research and recommendations for best practice in the application of these principles. In particular, we note that while Principle 10 calls for the inclusion of non-governmental stakeholders in the asset recovery process, these stakeholders are rarely invited to be part of discussions about how stolen assets should be returned and to which beneficiaries. We believe that their inclusion in these discussions is crucial to achieving the transparency and accountability laid out in Principle 4.

Additionally, we urge those Member States who were involved in GFAR to make public progress made to date on confiscating and returning assets that belong to the four focus countries.

Bearing in mind that weak financial regulation and financial secrecy are key factors that enable the large-scale theft of state assets and, in that connection, the importance of creating public and well verified Beneficial Ownership registers for companies, property and trusts, we commend the United Kingdom for adopting legislation that requires the government to ensure public registers will be present in the 14 Overseas Territories (OTs) by the end of 2020. We encourage the UK to do all it can to encourage the Crown Dependencies and other countries that have not yet done so to commit to a similar timeline of adoption and implementation.

Bearing in mind that asset theft is facilitated by professional enablers, often in both requesting and requested states, who in many cases go unpunished for their role in such facilitation, we urge each Member State to commit to publishing what action it has taken, regulatory or otherwise, against professional enablers when making public that it has confiscated stolen assets.

This statement was amended in order to be approved for release by UNODC as a Statement to the IRG. You find the Statement in its original wording here: https://uncaccoalition.org/en_US/civil-society-statement-for-the-uncac-working-group-on-asset-recovery-session-june-2018/

Annexes

- Civil Society Statement for the Global Forum on Asset Recovery, 4 December 2017, https://uncaccoalition.org/civil-society-statement-for-the-global-forum-on-asset-recovery/
- Civil Society Statement for the Global Forum on Asset Recovery Closing Session, 6 December 2017, https://uncaccoalition.org/civil-society-statement-for-the-global-forum-on-asset-recovery-closing-session/

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CIVIL SOCIETY UNCAC Coalition

Effective Disclosure – Applying asset and interest declarations to strengthen accountability of public officials and manage conflicts of interest

Mandatory disclosure requirements of assets and interests of public officials can be a powerful tool to manage potential conflicts of interests. Disclosure, if done right, may allow the public and relevant government bodies to identify and investigate conflicts of interest as well as inexplicable wealth, thus strengthening the integrity and accountability of public officials.

At least 161 countries have implemented some form of asset disclosure regulation, more than half of these countries require that information from the declarations is made accessible to the public.[1]

Article 7, para. 4 of the UNCAC requires States to "endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest." Article 8, para. 5 of the Convention covers asset declarations, including on outside activities, employment, investments, assets and substantial gifts or benefits that may result in a conflict of interest. Article 9 on public procurement and the management of public finances, as well as Article 10 on public reporting are also relevant to interest and asset disclosure mechanisms. Furthermore, Article 52, para. 5 calls for "effective financial disclosure systems for appropriate public officials" and to "provide for appropriate sanctions for non-compliance."

UNODC in 2011 and 2012 has prepared thematic reports on codes of conduct, public reporting and asset declarations.[2] The Intergovernmental Working Group on Prevention will focus on asset declarations and the management of conflicts of interests in its meeting on 5-7 September 2018.

From a civil society perspective, various questions arise:

- How do public watchdogs, such as CSOs and journalists, use asset declarations that are made accessible to the public online?
- What impact have disclosure mechanisms had in practice, and what effective sanctions can help to ensure compliance?
- The lack of access to data on foreign assets is one of the most frequently cited problem practitioners face – what could be done in this regard?
- Should asset declarations of low-level officials be exempted from public access?
- Could access to banking data and cooperation between bodies verifying asset declarations and FIUs be an emerging standard?

In order to discuss these topics, the UNCAC Coalition is organizing a **Special Event** on **"Effective Disclosure – Applying asset and interest declarations to strengthen accountability of public officials and manage conflicts of interest"** on Wednesday, 5 September 2018, 13:30–15:00, UN Vienna, C Building, Boardroom D (4th floor).

[1] World Bank/STAR (2016): Getting the full picture on public officials : a how-to guide for effective financial disclosure, http://documents.worldbank.org/curated/en/517361485509154642/Getting-the-full-picture-on-public-officials-a-how-to-guide-for-effective-financial-disclosure.

[2] Thematic reports by the UNCAC Secretariat: CAC/COSP/WG.4/2011/3 and CAC/COSP/WG.4/2012/3, https://www.unodc.org/unodc/en/corruption/WG-Prevention/financial-disclosure-declaration-of-assets.html.

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Sustainable Development Goals and UNCAC

In July 2019, the UN High Level Political Forum will review global progress on Goal 16 of the 2030 Agenda for Sustainable Development. This will be the first time that the progress of the Goal will be reviewed.

The Goal "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels" includes several UNCAC issues: strengthening the recovery and return of stolen assets (16.4), reducing corruption and bribery in all their forms (16.5), effective, accountable and transparent institutions (16.6) and ensuring public access to information (16.10).

Around 40 UN Member States will also conduct their Voluntary National Reviews (VNRs), which will examine how they have progressed on achieving the SDGs, including Goal 16. Many of those same countries are also undergoing their 2nd cycle UNCAC reviews, which cover many of the same issues.

World leaders will also be meeting in September 2019 to examine the progress of the SDGs, giving a rare opportunity for high level discussion.

This raises various questions, including:

- How can data collection done for each process can be used for the other?
- How can the energy and momentum for the SDGs can be used to enhance the fight against corruption?
- How can governments and civil society coalitions are using the separate review processes and linkages between them?

To advance discussions on the links between the SDGs and UNCAC, the UNCAC Coalition and ARTICLE 19 are co-organising a Special Event on "Sustainable Development Goals and UNCAC" on Thursday, 6 September 2018, 09:00 – 10:30, UN Vienna, Room M7.

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A human rights-based approach to corruption

Corruption is one of the major reasons people are denied the full enjoyment of the rights enshrined in UN human rights treaties, whether political and civil or economic, social and cultural rights.[1] This may happen when corruption undermines justice or electoral systems or results in denial of life or liberty or freedom of expression, association and assembly. It may also happen when corruption blocks economic, social or cultural rights, for example through diminishing the resources available for public services. Thus, the fight against corruption can have positive effects on the realization of human rights. At the same time, the promotion of human rights can also help prevent and detect corruption. For example, journalists and others can facilitate public access to information to uncover corruption and use freedom of expression to reveal and denounce corrupt practices; and citizens can challenge in impartial tribunals corrupt decisions that affect their lives.

The UNCAC does not mention the words "human rights" in its text although there are allusions to some of those rights in language in the preamble and articles.[2] UNODC's website says the following about UNCAC and human rights:

The UNCAC recognizes principles such as integrity, accountability, transparency and the right to information, all of which reinforces the practical application and respect for human rights. Moreover, by requiring States parties to take measures to strengthen judicial integrity and to prevent opportunities for corruption among members of the judiciary and the prosecution service, the Convention, consistent with human rights law, requires States parties to strengthen integrity standards as a key to prevent and counter corruption. UNCAC also sets out specific requirements to protect persons reporting, in good faith, about corruption

UNCAC discussions and resolutions occasionally reference human rights. At the 4th session of the UNCAC Conference of States Parties (CoSP) in 2011, the Office of the High Commissioner for Human Rights delivered a speech on Human Rights and the Fight against Corruption[3] At the 6th UNCAC Conference of States Parties in 2015, the Bolivian Embassy in Switzerland organized a side event on best practices in combating corruption and its impact on the enjoyment of human rights.

Human rights have been mentioned in four CoSP resolutions, in three at the 6th CoSP and in one at the 7th CoSP, as follows:

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[1] International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child, and other.

[2] For example, the first paragraph of its Preamble expresses concern about "*the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law...*" Article 11 refers to the independence of the judiciary and Article 13 calls for "*Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption...*"

[3] https://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Statements/OHCHRStatementMorocco27Oct2011.pdf.

- UNCAC CoSP Resolution 6/6 included in its preamble the wording "*Stressing* that preventive measures are one of the most effective means of countering corruption and of avoiding its negative impact on the enjoyment of human rights…"
- UNCAC CoSP Resolution 6/8 included the language: *Concerned also* about the negative impact of widespread corruption on the enjoyment of human rights, and recognizing that corruption constitutes one of the obstacles to the effective promotion and protection of human rights and fundamental freedoms,
- UNCAC CoSP Resolution 6/10 stated: *Recalling* Human Rights Council resolution 29/11 of 2 July 2015, entitled "The negative impact of corruption on the enjoyment of human rights", in which the Council recognized that the negative impact of corruption on human rights and sustainable development could be combated through anti-corruption education and noted with appreciation the capacity-building activities and specialized curricula developed by relevant institutions. This resolution also mentioned human rights twice in its operative paragraphs.
- UNCAC CoSP Resolution 7/2 recalled General Assembly resolution 71/208 of 19 December 2016, expressed concern about the negative impact that corruption can have on the enjoyment of human rights.[4]

However UNCAC forums have not attempted any in-depth examination of the connections between corruption and human rights.

There has been far more attention to this subject at the UN in Geneva. In 1991, the former Sub-Commission on the Prevention of Discrimination and Protection of Minorities took up this issue and discussed the problem of capital flight and fraudulent enrichment of high-ranking State officials, which led to the adoption of a Commission on Human Rights resolution in 1992 entitled "Fraudulent enrichment of top State officials prejudicial to the public interest, the factors responsible for it, and the agents involved in all countries in such fraudulent enrichment." United Nations human rights bodies have been concerned with the issue of corruption and its impact on human rights ever since. The Human Rights Sub-Commission's appointed for 2003-2006 a Special Rapporteur on corruption and its impact on the full enjoyment of human rights. In June 2013, the Human Rights Council adopted a resolution on the negative impact of corruption on the enjoyment of human rights[5] and in March 2017, it adopted a resolution on the negative impact of the non-repatriation of funds of illicit origin on the enjoyment of human rights.[6]

There have also been studies relating to corruption and human rights by UNOHCHR and other UN Geneva human rights instances including:

- UNOHCHR, Best practices to counter the negative impact of corruption on the enjoyment of all human rights (April 2016)[7]
- Independent Expert on effects of foreign debt etc. on the full enjoyment of human rights, Report on illicit financial flows, human rights and the 2030 Agenda for Sustainable Development (January 2016)[8]
- UN HRC AC, Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights (January 2015)[9]
    - UNODC, Response to questionnaire on the negative impact of corruption on the enjoyment of human rights[10]

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[4] http://undocs.org/A/RES/71/208.

[5] https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/149/72/PDF/G1314972.pdf?OpenElement.

[6] https://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/NegativeImpactNonRepatriationFundsIllicitOrigin.aspx.

[7] http://undocs.org/A/HRC/32/22.

[8] https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/Consultation.aspx.

[9] https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_74_en.doc.

[10] https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/HRBodies/

  - UN OHCHR, Response to questionnaire on the negative impact of corruption on the enjoyment of human rights[11]
- Special Rapporteur on the independence of judges and lawyers, Report addressing two aspects of the phenomenon of corruption: judicial corruption; and combating corruption through the judicial system (August 2012)[12]
- UN OHCHR, Comprehensive study on the negative impact of the non-repatriation of funds of illicit origin to the countries of origin on the enjoyment of human rights, in particular economic, social and cultural rights (December 2011)[13]

Moreover, international human rights treaty bodies and mechanisms, including the Human Rights Council, have paid increasing attention in country reviews to the negative impact of corruption and made numerous recommendations to Member States with the aim of preventing and suppressing corruption. The Committee on Economic Social and Cultural Rights frequently includes a section on corruption in its Concluding Observations to State parties after the dialogue with the country concerned.

From a civil society perspective, numerous questions arise, including:

- What are the human rights implications of grand corruption and small-scale corruption?
- What are the specific human rights issues in relation to asset recovery?
- What are the common tools used for protection of human rights and fighting corruption and how can they be enhanced in light of their use in both areas? How can overlaps be leveraged?
- What are good practices in this area?
- What kind of joint discussions, activity and mechanisms should link UN work on corruption in Vienna and Geneva?

To advance discussion of these issues, the UNCAC Coalition is co-organizing with Transparency International a **Special Event** entitled **"A human rights-based approach to corruption"** on Thursday, 6 September 2018, from 13:30 – 15:00 at the UN Vienna (room M7).

HRCouncil/AdvisoryCom/Corruption/UNODC.doc&action=default&DefaultItemOpen=1.

[11] https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf.

[12] http://undocs.org/A/67/305.

[13] https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-42_en.pdf.